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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 JUAN JOSE VASQUEZ-
12 GUTIERREZ,

13 Defendant.

NO. 2:15-CR-00088-JLQ

ORDER OF DISMISSAL WITHOUT
PREJUDICE

14 On May 24, 2016, the court held a hearing in this matter on Defendant's Motion to
15 Dismiss Indictment (ECF No. 26) and the Government's Motion for Order of Dismissal
16 Without Prejudice (ECF No. 27). Defendant was present and in custody, represented by
17 John Stephen Roberts, Jr., of the Federal Defenders of Eastern Washington and Idaho.
18 Assistant United States Attorney Matthew Duggan appeared for the Government. This
19 Order supplements and memorializes the court's oral rulings.

20 Defendant's Motion seeks dismissal based on the Government's failure to obtain
21 and produce the deportation tapes within the time ordered by the court. *See* (ECF No. 26 at
22 1); (ECF No. 23). At oral argument, Mr. Roberts clarified he was seeking dismissal with
23 prejudice. While the Government's initial Motion was internally inconsistent, the
24 Government filed a praecipe clarifying it was seeking dismissal of this matter without
25 prejudice pursuant to Fed.R.Crim.P. 48(a). *See* (ECF No. 30). Fed.R.Crim.P. 48(a) states
26 "The government may, with leave of court, dismiss an indictment, information or
complaint."

1 Prior to the hearing, the court made the parties aware it was considering dismissal
2 pursuant to the Speedy Trial Act based upon the lack of diligence by the Government. *See*
3 (ECF No. 29). Having considered the parties' Motions and the record as a whole, the court
4 declines to find a willful violation of the Speedy Trial Act. While the conduct of the
5 Government in this matter has been far from exemplary, the court finds it does not rise to
6 the level where it would be appropriate to dismiss this matter with prejudice.

7 **IT IS HEREBY ORDERED:**

8 1. Defendant's Motion to Dismiss Indictment (ECF No. 26) is **DENIED**.

9 2. The Government's Motion to Dismiss (ECF No. 27) is **GRANTED**.

10 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order, furnish
11 copies to counsel and the United States Marshal, and close the file.

12 **DATED** this 25th day of May, 2016.

13 s/ Justin L. Quackenbush
14 JUSTIN L. QUACKENBUSH
15 SENIOR UNITED STATES DISTRICT JUDGE
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